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## Hartwell Corp. v. Santamaria, 38 P.3d 1098 (Cal. 2002)

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the government could not take his water rights without compensation, the injunction against him was too broad, and civil penalties should not have been assessed. The court affirmed.

Murrison's water rights dated back to 1870-1912. He argued that his water right predated the Code and was therefore exempt from its requirements. The court of appeals found, however, that water rights predating the Code are not exempt from regulation. It is within the state's police power to create reasonable regulations to protect the wildlife of the state.

Murrison argued he was not diverting new water but rather maintaining his waterworks and was exempt from the Code. The court found that Murrison's action was not maintenance, but rather a substantial diversion that required DFG notification.

Murrison also argued that the state could not take his water right without just compensation. The court found that Murrison's takings claim was not ripe. Murrison did not bring a takings claim at the trial court level and was not restricted from making the claim on appeal. The court stated, however, that they found no restrictions on Murrison's right to divert water. Murrison was only required to notify the DFG of his diversion. Had Murrison given notice, the DFG may have approved the diversion without any restrictions.

Murrison claimed the trial court should not have assessed a civil penalty. The court found the Code allows penalties in excess of what Murrison received and justified the penalty based on Murrison's actions coupled with the nature of the diversion and damages.

*Colleen M. Cooley*

**Hartwell Corp. v. Santamaria, 38 P.3d 1098 (Cal. 2002)** (holding public utility commission's jurisdiction does not extend to suits against non-regulated utilities and industries, nor to suits alleging violations of state and federal water-quality standards).

Multiple consumers brought actions in two superior courts against regulated water providers ("RWPs"), non-regulated water providers ("NRWPs"), and multiple industrial companies for damages and injunctive relief from alleged water contamination. The parties claimed that the water utilities provided them unsafe drinking water causing death, personal injury, and property damage. The California Court of Appeals held one of the two superior courts erred: (1) in staying the proceedings instead of ruling on the merits; (2) by failing to grant the RWPs' Public Utilities Code section 1759 motion to dismiss; and (3) by failing to deny the industrial companies' and the NRWPs' section 1759 motions to dismiss. The appeals court also held the second superior court was correct in granting the RWPs' motion to dismiss and denying the NRWPs' and the industrial companies' motions to dismiss. The Supreme Court of California granted

petitions for review filed by the RWPs, the NRWPs, the industrial companies, and the consumers.

The Supreme Court held while section 1759 preempts claims alleging insufficient water regulation standards, it does not preempt damage claims against RWPs alleging violations of federal and state drinking water standards, nor does it preempt any claims against unregulated entities, specifically the NRWPs and the industrial companies.

The court began its analysis with a background of the jurisdiction of the public utility commissions (“PUC”), and the effects section 1759 had on the PUC’s jurisdiction and the industrial companies. Normally, no court except an appeals court or a supreme court has jurisdiction to review, reverse, correct, or annul any PUC order or decision. However, Public Utilities Code section 2106 creates a cause of action in any court for damages resulting from a public utility’s unlawful act or neglect of a positive duty. The court resolved the inherent conflict between these two sections by applying the three-part test from *San Diego Gas & Electric Co. v. Superior Court* (“*Covalt*”). This conjunctive test bars an action in superior court if: (1) the PUC had authority to set and enforce regulatory standards; (2) the PUC exercised that authority; and (3) the superior court action would hinder or interfere with the PUC’s exercise of regulatory authority.

The court then analyzed section 1579’s effect on the claims against the RWPs. The court found all actions against the RWPs passed the first *Covalt* prong. The PUC had authority because: (1) it regulated public health and safety through public utilities, and therefore regulated water quality; (2) it regulated rates and set budgets for water treatment, and therefore water quality; and (3) it had statutory authority to set water quality standards not inconsistent with state standards, which the court reasoned to mean the PUC could set any standard above state levels which it deemed appropriate.

The court further found all actions against the RWPs passed the second *Covalt* prong because the PUC exercised its authority. The PUC exercised its authority in a number of ways, including: regulating rates; issuing guidelines for water quality improvement projects; and issuing a decision that conforming to drinking water standards would require investment of \$50 million to \$200 million over several years.

Finally, the court found some of the consumers’ actions passed the third *Covalt* prong, while others did not. The actions that did not pass were those that asserted the water quality standards were inherently faulty. The court reasoned that superior court review of the water quality standards themselves would hinder and interfere with the PUC’s exercise of regulatory authority by directly reviewing an order or decision of the PUC. Therefore, section 1759 preempted claims alleging faulty standards. However, the court found section 1759 did not preempt claims that asserted faulty compliance with existing standards. The court reasoned the PUC only had mechanisms for prospective remedial programs, but no mechanism by which

consumers could obtain relief for past violations. Since the PUC had no jurisdiction to hear suits seeking damages for faulty compliance, section 1759 did not bar consumers' suits based on such damages because there was no direct review, reversal, correction, or annulment of the PUC's order or decision. The court concluded section 1759 did not bar those claims based solely on faulty compliance.

The court then disposed of consumers' claim for injunctive relief to provide clean water. The court reasoned an injunction, based on a finding different from that of the PUC, would clearly conflict with the PUC decision-making and regulatory functions. The court contrasted an injunction as a form of prospective remedial relief with a jury award of damages. The court concluded section 1759 preempted injunctive relief.

The court then turned its attention to the NRWPs and the industrial companies. The NRWPs and industrial companies argued three points. First, they argued section 1759 encompassed both utility and nonutility parties. Second, that section 1759 and *Covalt* applied broadly to subject matters and issues before the PUC, not just to actions against regulated utilities. Finally, they argued some of the NRWPs' water was from the same supply as the NRWPs. Thus a jury award undermined the PUC's report that the drinking water was safe by directly reviewing, reversing, correcting, or annulling the PUC's decision.

The court dismissed the first argument by reasoning the California Constitution restricts the PUC's duties to regulated utilities. Therefore, suits against unregulated utilities and non-utilities could not possibly interfere with the PUC's official regulatory duties. The court dismissed the second argument by noting the NRWPs and the industrial companies cited no case law to support their argument. The court noted the NRWPs and industrial companies cited isolated statements from cases in an attempt to bolster their position. The court read the statements within the broader context of the cases and found the statements actually supported the position that section 1759 and *Covalt* applied only to cases against regulated utilities. The court dismissed the third argument by noting the PUC had no jurisdiction to hear cases against NRWPs. Therefore, the PUC's jurisdiction would suffer no injury if the superior court addressed the case. Moreover, if the superior court had no jurisdiction, the cases would have no forum at all.

Thus, the Supreme Court reversed the appellate court on the preemption issues only, and affirmed the remainder of the appellate decision. The court remanded the case to the Court of Appeals.

*James Parrot*